

ESTTA Tracking number: **ESTTA558950**

Filing date: **09/11/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hard Rock Cafe International (USA), Inc.		
Entity	Corporation	Citizenship	Florida
Address	6100 Old Park Lane Orlando, FL 32835 UNITED STATES		

Attorney information	P. Jay Hines Cantor Colburn LLP 1800 Diagonal Road Suite 400 Alexandria, VA 22314 UNITED STATES tm-dc@cantorcolburn.com Phone:703-236-4500
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Applicant Information

Application No	85887124	Publication date	08/13/2013
Opposition Filing Date	09/11/2013	Opposition Period Ends	09/12/2013
Applicants	<p>Crothers, David W 9321 Cool Creek Ave Las Vegas, NV 89147 UNITED STATES</p> <p>Demski, Justin K 9321 Cool Creek Ave Las Vegas, NV 89147 UNITED STATES</p> <p>Cellini, Amy S 9321 Cool Creek Ave Las Vegas, NV 89147 UNITED STATES</p>		

Goods/Services Affected by Opposition

Class 010. First Use: 2010/12/10 First Use In Commerce: 2011/11/20
All goods and services in the class are opposed, namely: Massage apparatus

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration	3243039	Application Date	08/24/2005
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No.			
Registration Date	05/15/2007	Foreign Priority Date	NONE
Word Mark	ROCK SPA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Health spa services, namely, cosmetic body care services		

U.S. Registration No.	4017047	Application Date	08/09/2010
Registration Date	08/23/2011	Foreign Priority Date	NONE
Word Mark	ROCK SPA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2009/09/01 First Use In Commerce: 2009/09/01 Bath salts; Body lotion; Hair conditioner; Shampoos; Shower and bath gel; Soaps for body care		

U.S. Registration No.	3626691	Application Date	10/17/2008
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	ROCK SPA		
Design Mark			
Description of Mark	The mark consists of the words "ROCK" and "SPA" separated by a swirl design.		
Goods/Services	Class 044. First use: First Use: 2008/10/01 First Use In Commerce: 2008/10/01 Day spa services, namely, nail care, manicures, pedicures and nail enhancements; Health spa services, namely, body wraps, mud treatments, seaweed treatments, hydrotherapy baths, and body scrubs; Health spa services, namely, cosmetic body care services		

Attachments	ROCK THE SPA Notice of Opposition.pdf(4181578 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pjh/
Name	P. Jay Hines
Date	09/11/2013

**IN THE UNITED STATES PATENT TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL APPEAL BOARD**

Hard Rock Cafe International (USA), Inc.)

Opposer,)

v.)

David W. Crothers, Justin K. Demski and)
Amy S. Cellini)

Applicants.)

Opposition No.

Application No.: 85887124

Mark: ROCK THE SPA

NOTICE OF OPPOSITION


Hard Rock Cafe International (USA), Inc., a corporation duly organized and existing under the laws of Florida, having its corporate address and a principal place of business at 6100 Old Park Lane, Orlando, FL 32835 (hereinafter “Opposer”), believing that it will be damaged by the registration, hereby opposes application Serial No. 85887124 for the mark ROCK THE SPA, filed under the Trademark Act of 1946 on March 26, 2013, in the name of David W. Crothers, Justin K. Demski and Amy S. Cellini, and published for opposition in the Official Gazette of August 13, 2013.

1. The Opposer, Hard Rock Cafe International (USA), Inc., is a corporation duly organized and existing under the laws of Florida, having its corporate address and a principal place of business at 6100 Old Park Lane, Orlando, FL 32835.

2. Commencing long prior to Applicant's claimed date of first use, Opposer has engaged, and is now engaged in the distribution, sale, advertising and promotion in interstate commerce of health spa services, namely, cosmetic body care services; day spa services, namely, nail care, manicures, pedicures and nail enhancements; health spa services, namely, body wraps, mud treatments, seaweed treatments, hydrotherapy baths, and body scrubs; bath salts; body lotion; hair conditioner; shampoos; shower and bath gel; and soaps for body care.

3. Commencing long prior to Applicant's claimed date of first use, Opposer has used, and is now using Opposer's ROCK SPA and ROCK SPA & Design marks (hereinafter sometimes referred to as "Opposer's Marks" or "Marks") in connection with the services and goods outlined in Paragraph 2 in commerce.

4. Opposer is the owner of, and will rely herein, upon the following Federal trademark registrations covering the services and goods outlined in Paragraph 2:

<u>MARK</u>	<u>REGISTRAITON NO.</u>	<u>ISSUED</u>
ROCK SPA	3243039	May 15, 2007
ROCK SPA	4017047	August 23, 2011
	3626691	May 26, 3009

Copies of the listed Registrations are attached hereto, as Exhibit 1. Said registered marks of Opposer are in full force and effect on the Principal Register and either operate as prima facie or conclusive evidence of Opposer's ownership of said marks and its exclusive right to use the same in commerce throughout the United States. Opposer's Registration No. 3243039 has achieved incontestable status.

6. Since its initial use of the aforementioned Marks, Opposer has made a substantial investment in promoting its services and goods under its Marks. Opposer has extensively used, promoted and offered Opposer's services and goods in connection with Opposer's Marks to the public through various channels of trade in commerce, with the result that Opposer's customers and the public

in general have come to know and recognize Opposer's Marks and associate same with Opposer and/or services rendered and goods sold by Opposer. Opposer has built extensive goodwill in connection with the sale and provision of its services and goods under its Marks.

7. Upon information and belief, notwithstanding Opposer's rights in and to its Marks, on March 26, 2013, Applicant filed an application for registration of the alleged trademark ROCK THE SPA for: "Massage apparatus," in International Class 10. Said application was assigned Serial No. 85887124 and was published for Opposition in the Official Gazette of August 13, 2013.

8. Applicant's mark so resembles Opposer's Marks as to be likely, when used in connection with the goods of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation.

9. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's goods marketed under Applicant's alleged mark and misled into believing that such goods are produced by, emanate from, or are otherwise in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

10. Opposer, upon information and belief, avers that it will be damaged by the continued use and registration by Applicant of the alleged mark, as set forth in Applicant's Trademark Application Serial No. 85887124 in that the mark is substantially similar to Opposer's Marks and common law rights and will be used in connection with goods closely related to the services and goods offered to the public by Opposer,.

WHEREFORE, this Opposer, Hard Rock Cafe International (USA), Inc., believes and avers that it is being and will continue to be damaged by registration of Applicant's mark as aforesaid, and prays that said Application Serial No. 85887124 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed P. Jay Hines, a member of the law firm of Cantor Colburn LLP, and member of the Bar of the state of Virginia and the District of Columbia, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

P. Jay Hines
Cantor Colburn LLP

1800 Diagonal Road
Suite 510
Alexandria, Virginia 22314
Tel: (703) 236-4500
Fax No.: (703) 236-4501

The filing fee of \$300.00 for this opposition is being paid online by credit card. The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Opposer's Deposit Account No. 061130.

Respectfully submitted,

HARD ROCK CAFE INTERNATIONAL (USA), INC.

Date: September 11, 2013

By: _____

P. Jay Hines
Cantor Colburn LLP
1800 Diagonal Rd.
Suite 510
Alexandria, VA 22314
Tel.: (703) 236-4500
Fax: (703) 236-4501
jhines@cantorcolburn.com

Exhibit 1

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,243,039

Registered May 15, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

ROCK SPA

HARD ROCK CAFE INTERNATIONAL (USA),
INC. (FLORIDA CORPORATION)

6100 OLD PARK LANE

ORLANDO, FL 32835

FOR: HEALTH SPA SERVICES, NAMELY, COS-
METIC BODY CARE SERVICES, IN CLASS 44 (U.S.
CLS. 100 AND 101).

FIRST USE 1-1-2001; IN COMMERCE 1-1-2001.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SPA", APART FROM THE MARK
AS SHOWN.

SN 78-699,321, FILED 8-24-2005.

EDWARD FENNESSY, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

ROCK SPA

Reg. No. 4,017,047

Registered Aug. 23, 2011

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

HARD ROCK CAFE INTERNATIONAL (USA), INC. (FLORIDA CORPORATION)
6100 OLD PARK LANE
ORLANDO, FL 32835

FOR: BATH SALTS; BODY LOTION; HAIR CONDITIONER; SHAMPOOS; SHOWER AND BATH GEL; SOAPS FOR BODY CARE, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 9-1-2009; IN COMMERCE 9-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,243,039 AND 3,626,691.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPA", APART FROM THE MARK AS SHOWN.

SN 85-103,418, FILED 8-9-2010.

STEVEN R. FINE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 44


Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,626,691

Registered May 26, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

rock  spa

HARD ROCK CAFE INTERNATIONAL (USA),
INC. (FLORIDA CORPORATION)
6100 OLD PARK LANE
ORLANDO, FL 32835

FOR: DAY SPA SERVICES, NAMELY, NAIL
CARE, MANICURES, PEDICURES AND NAIL EN-
HANCEMENTS; HEALTH SPA SERVICES, NAME-
LY, BODY WRAPS, MUD TREATMENTS,
SEAWEED TREATMENTS, HYDROTHERAPY
BATHS, AND BODY SCRUBS; HEALTH SPA SER-
VICES, NAMELY, COSMETIC BODY CARE SERVI-
CES, IN CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 10-1-2008; IN COMMERCE 10-1-2008.

OWNER OF U.S. REG. NO. 3,243,039.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SPA", APART FROM THE MARK
AS SHOWN.

THE MARK CONSISTS OF THE WORDS "ROCK"
AND "SPA" SEPARATED BY A SWIRL DESIGN.

SER. NO. 77-595,433, FILED 10-17-2008.

REBECCA POVARCHUK, EXAMINING ATTOR-
NEY

CERTIFICATE OF TRANSMISSION AND SERVICE


I certify that the foregoing NOTICE OF OPPOSITION is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313

and that the foregoing NOTICE OF OPPOSITION is being sent via first class mail and email to:

David W. Crothers
9321 Cool Creek Ave.
Las Vegas, Nevada 89147-7840
rockthespa@gmail.com

This 11th day of September, 2013



Denise Countiss-Lowe